

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No.: EB-10-SE-139
)	
American Music and Sound)	Acct. No.: 201232100019
)	
)	FRN: 0021524640

ORDER

Adopted: March 2, 2012**Released: March 2, 2012**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission and American Music and Sound (AMS). The Consent Decree resolves and terminates the Bureau's investigation into AMS's compliance with Section 302(b) of the Communications Act of 1934, as amended (Act),¹ and Sections 2.803, 2.1203, 15.19, 15.21, and 15.105 of the Commission's rules² (Rules) pertaining to the marketing of unauthorized Class A digital audio radio frequency devices.

2. The Bureau and AMS have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether AMS possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 2.1203, 15.19, 15.21, 15.105.

³ 47 U.S.C. §§ 154(i), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Lynn P. Martin, President, American Music and Sound, 22020 Clarendon Street, Suite # 305, Woodland Hills, CA 91367, and to Marianne Roach Casserly, Esq., Counsel to American Music and Sound, Alston & Bird LLP, The Atlantic Building, 950 F Street, N.W., Washington D.C. 20004-1404.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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American Music and Sound)	Acct. No.: 201232100019
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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and American Music and Sound, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Section 302(b) of the Communications Act of 1934, as amended,¹ and Sections 2.803, 2.1203, 15.19, 15.21, and 15.105 of the Commission's rules² pertaining to the marketing of digital audio radio frequency devices, including digital multitrack recorders, live recording mixers, and stereo rack monitors.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "AMS" means American Music and Sound and its predecessors-in-interest and successors-in-interest.
 - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which AMS is subject by virtue of its business activities, including but not limited to, the Equipment Marketing Rules.
 - (f) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (g) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at paragraph 8.
 - (h) "Covered Employees" means all employees and agents of AMS who perform or supervise, oversee, or manage the performance of, duties that relate to AMS's responsibilities under the Equipment Marketing Rules.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 2.1203, 15.19, 15.21, 15.105.

- (i) “Digital Device” means an unintentional radiator device or system as defined in Section 15.3(k) of the Rules.³
- (j) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (k) “Equipment Marketing Rules” means Section 302(b) of the Act⁴ and Sections 2.803, 2.1203, 15.19, 15.21, and 15.105 of the Rules and other Communications Laws governing the Marketing of radio frequency devices within the United States and its territories.
- (l) “Investigation” means the investigation commenced by the Bureau’s August 25, 2010 letter of inquiry⁵ regarding whether the Marketing of certain Digital Devices by AMS complies with the Equipment Marketing Rules.
- (m) “Marketing” or “Marketed” means the activities defined in 47 C.F.R. § 2.803(e)(4) and “includes sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.”
- (n) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by AMS to implement the Compliance Plan.
- (o) “Parties” means AMS and the Bureau, each of which is a “Party”.
- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. Background

2. Pursuant to Section 302(b) of the Act⁶ and Sections 2.803, 2.1203, 15.19, 15.21, and 15.105 of the Rules,⁷ certain Digital Devices may not be Marketed in the United States unless the devices comply with the applicable technical standards and administrative requirements relating to equipment labeling and consumer disclosure. AMS is a distributor of professional audio, music creation, and musical instrument products, such as digital multitrack recorders, live recording mixers and stereo rack monitors. Certain products distributed by AMS are Digital Devices, and as such are unintentional radiators that require prior Commission authorization via the Commission’s equipment verification procedures.⁸

³ 47 C.F.R. § 15.3(k).

⁴ 47 U.S.C. § 302a(b).

⁵ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Lynn Martin, President, American Music and Sound (Aug. 25, 2010).

⁶ 47 U.S.C. § 302a(b).

⁷ 47 C.F.R. §§ 2.803(a), 2.1203, 15.19, 15.21, 15.105.

⁸ 47 C.F.R. § 15.101.

3. On August 25, 2010, the Bureau's Spectrum Enforcement Division (Division) issued the letter of inquiry (LOI)⁹ to AMS directing AMS to submit a sworn written response to a series of questions relating to whether the company was Marketing certain Digital Devices without Commission authorization. AMS responded to the LOI on September 24, 2010 (LOI Response).¹⁰ In its LOI Response, AMS submitted information and documentation related to the Digital Devices at issue, noting that it had imported these devices from a foreign manufacturer.¹¹ AMS also stated that the Digital Devices complied with the European EN55011 standard and that AMS was not aware that these devices were not fully compliant with FCC requirements. On March 21, 2011, the Division issued AMS a second letter of inquiry,¹² to which the company responded on April 20, 2011 (Supplemental LOI Response).¹³ In the Supplemental LOI Response, AMS further represented that it ceased Marketing the majority of non-compliant devices as of September 2010 and the remainder of such non-compliant devices as of October 2010.¹⁴ The Bureau and AMS executed tolling agreements to toll the statute of limitations.¹⁵

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

5. **Jurisdiction.** AMS agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, AMS agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal

⁹ See *supra* note 5.

¹⁰ See Letter from Dean Downey, Business Manager, American Music and Sound, to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division (Sept. 24, 2010).

¹¹ LOI Response at 1.

¹² See Letter from Ricardo M. Durham, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Lynn Martin, President, American Music and Sound (Mar. 21, 2011).

¹³ See Letter from Lynn Martin, President, American Music and Sound, to Ricardo M. Durham, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (Apr. 20, 2011).

¹⁴ Supplemental LOI Response at 16.

¹⁵ See, e.g., Tolling Agreement Extension, File No. EB-10-SE-139, executed by and between John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications, and Marianne Casserly, Esq., Alston & Bird LLP, Counsel to American Music and Sound (Nov. 16, 2011).

or informal, or take any action on its own motion against AMS concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against AMS with respect to AMS's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, AMS agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan to help ensure future compliance with the Communications Laws, including the Equipment Marketing Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan shall include, without limitation, the following components:

- (a) **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, AMS shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that AMS complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Equipment Marketing Rules prior to assuming his/her duties.
- (b) **Operating Procedures on Equipment Marketing.** Within sixty (60) calendar days after the Effective Date, AMS shall establish Operating Procedures that all Covered Employees must follow to help ensure AMS's compliance with the Equipment Marketing Rules. AMS's Operating Procedures shall include internal procedures and policies specifically designed to ensure that (i) all Digital Devices and other radio frequency devices Marketed by AMS comply with applicable technical standards, have been properly authorized (via the certification, verification, or declaration of conformity procedures, as applicable), and comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure; and (ii) any Digital Devices that do not comply with the Equipment Marketing Rules are not Marketed to U.S. consumers.
- (c) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Equipment Marketing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure AMS's compliance with the Equipment Marketing Rules. AMS shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. AMS shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (d) **Compliance Training Program.** AMS shall establish and implement a Compliance Training Program on compliance with the Equipment Marketing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of AMS's obligation to report any non-compliance with the Equipment Marketing Rules under paragraph 9 of this Consent Decree and shall be instructed on how to disclose non-compliance to the

Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. AMS shall repeat the compliance training on an annual basis and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

- (e) **Termination Date.** Unless stated otherwise, the requirements of this paragraph 8 of the Consent Decree shall expire twenty-four (24) months after the Effective Date.

9. **Reporting Non-Compliance.** AMS shall report any non-compliance with the Equipment Marketing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such non-compliance. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that AMS has taken or will take to remedy such non-compliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that AMS has taken or will take to prevent the recurrence of any such non-compliance. All reports of non-compliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Kathy Harvey at Kathy.Harvey@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov. The reporting obligations set forth in this paragraph 9 shall expire twenty-four (24) months after the Effective Date.

10. **Compliance Reports.** AMS shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each compliance report shall include a detailed description of AMS's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of AMS, stating that the Compliance Officer has personal knowledge that AMS (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 9 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules¹⁶ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of AMS, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of non-compliance; (ii) the steps that AMS has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that AMS has taken or will take to prevent the recurrence of

¹⁶ 47 C.F.R. § 1.16.

any such non-compliance, including the schedule on which such preventive action will be taken.

- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Kathy Harvey at Kathy.Harvey@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

11. **Voluntary Contribution.** AMS agrees that it will make a voluntary contribution to the United States Treasury in the amount of seventy-two thousand dollars (\$72,000). The payment must be made within thirty (30) calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). AMS shall also send electronic notification to Kathy Harvey at Kathy.Harvey@fcc.gov, JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

12. **Waivers.** AMS waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. AMS shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither AMS nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and AMS shall waive any statutory right to a trial *de novo*. AMS hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 et seq., relating to the matters addressed in this Consent Decree.

13. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which AMS does not expressly consent) that provision will be superseded by such Rule or Commission order.

15. **Successors and Assigns.** AMS agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

18. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Authorized Representative.** The individual signing this Consent Decree on behalf of AMS represents and warrants that he/she is authorized by AMS to execute this Consent Decree and to bind AMS to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

20. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Lynn P. Martin
President
American Music and Sound

Date